

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE**

NICE SYSTEMS, INC., a Delaware Corporation, and)	
NICE SYSTEMS, LTD., an Israeli Corporation,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 06-311-JJF
)	
WITNESS SYSTEMS, INC, a Delaware Corporation,)	
)	
Defendant.)	

PROPOSED RULE 16 SCHEDULING ORDER

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties will exchange by October 17, 2006 the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.

2. **Joinder of other Parties.** All motions to join other parties shall be filed on or before January 3, 2007.

3. **Discovery.**

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by [Plaintiffs propose March 15, 2007; Defendant proposes June 1, 2007].

(b) Maximum of 50 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 20 requests for admission by each side.

(d) Maximum of 25 depositions by all plaintiffs and by 25 defendant, excluding expert depositions. Depositions shall not commence until the discovery required by Paragraph 3(a, b and c) is completed.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party having the burden of proof by [Plaintiffs propose August 15, 2007, with reply reports due by September 15, 2007; Defendant proposes February 12, 2008, with reply reports due by March 12, 2008].

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties or ordered by the Court.

4. Discovery Disputes.

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages and must specify that the filing is pursuant to the Discovery Dispute procedures provided in this paragraph. An Answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at jjf_civil@ded.uscourts.gov that the dispute is ready for decision.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before February 7, 2007.

6. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before [Plaintiffs propose November 16, 2007; Defendant proposes May 14, 2008]. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

7. **Markman.**

A Markman hearing will be held on [Plaintiffs propose June , 2007 on whichever day is convenient for the Court after June 20, 2007; Defendant proposes November 15, 2007]. Briefing on the claim construction issues shall be completed at least ten (10) business days prior to the hearing. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

The parties shall, on or before [Plaintiffs propose March 16, 2007; Defendant proposes July 18, 2007], exchange a list of those claim term(s)/phrase(s) that they believe need construction. The parties shall exchange proposed constructions for terms in dispute on or before [Plaintiffs propose April 4, 2007; Defendant proposes August 17, 2007]. These exchanges shall not be filed with the Court. Subsequent to making the exchanges, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted to the Court. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) at issue, and should include each party's proposed construction of the disputed claim

language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) at issue and those portions of the intrinsic record and/or and extrinsic evidence relied upon are to be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument. The Joint Claim Construction Chart shall be submitted to the Court on [Plaintiffs propose April 18, 2007; Defendant proposes August 31, 2007]. Issues of claim construction shall be submitted to the Court by each party filing an opening brief on [Plaintiffs propose May 18, 2007; Defendant proposes October 2, 2007], and a responsive brief on [Plaintiffs propose June 7, 2007; Defendant proposes November 1, 2007].

8. Applications by Motion.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. Pretrial Conference and Trial. In accordance with the Court's Order

dated August 15, 2006 (DI 34, trial will be scheduled at the Pretrial Conference to commence

within 120 days of the Pretrial Conference. Counsel should be available during the 120 day period for trial.

DATE

UNITED STATES DISTRICT JUDGE